

# Grassroots growing upwards

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Maximilian Steinbeis Fr 6 Dez  
2019

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At the German Social Democratic Party conference in Berlin today, the delegates will elect two new leaders for their battered old party. One is named ESKIA WHATSIT, I believe, and the other Walter Thingum-Norjans or whatever, not that it mattered much if this formerly great party keeps on shriveling into insignificance and flinging their leaders left and right at this astonishing rate, I guess. Anyway, I can't say anything bad about these two, and even if I could: the matter is settled already. The delegates won't have to worry about whether and why they'll vote for them and for what reasons. They will honour the choice of the party members who have expressed their preference for these over others by a considerable margin in a primary election and pinned their hopes on two hardly known leftwingers to lead them from the meat pots of the grotesquely misnamed *GroKo* (Great Coalition) into the opposition desert, in the millennial hope that there be still a promised land for them somewhere out there even if it takes them forty years to find it. The leadership, old and new, may still fudge and fiddle for a while but eventually they'll probably have to accept the sovereign wish and command of the true people of the SPD: Get GroKoexit done!

Which brings us to the general elections in the UK. Boris Johnson or Jeremy Corbyn, who will it be? Both have been elevated to their leadership position by their respective party members in primary elections, too, doubts of the most serious kind about their aptitude notwithstanding. The Tory members chose to be entertained by Boris Johnson, the louder those human-rights Europhiles with their smug condescension for hard-working businessmen shrieked and screamed the better, and if Boris, with his colossal lack of trustworthiness, will end up a number of seats shy of a government majority again and the whole venerable Westminster model of parliamentary democracy ultimately goes down the toilet, well: that's just how it will be then, won't it? The party membership has spoken its will and must have it.

Over at the Labour Party it's pretty much the same. The lowly rank-and-file party members just love their crinkled old Jezza for the principled way he stays true to himself and his ideals and not bending for compromises and a clear Brexit policy and winning power, because only politicians do those things, and who wants a politician to lead your party? He can't win of course, Jeremy Corbyn, but hey: he lost by a much smaller margin than everybody thought in 2017, and didn't that feel just great?

## Inner-party democracy

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In a democracy, parties are expected to be internally organized in a democratic way, too. This is how it must be, certainly in Germany where the constitution even explicitly demands it. The analogy seems so obvious that we hardly ever question it at all.

But is it really that obvious? In which way exactly is party members picking their leaders analogue to citizens picking their government? We wouldn't call the election of board members by shareholders democracy, would we? If democracy is about legitimizing rule by the will of the ruled – are Jeremy Corbyn or Saskia Esken *ruling* over their party members? If democracy is about collective self-determination – is a decision which personnel and programme is most likely to be successful in the elections really first and foremost about the *self-determination of party members*?

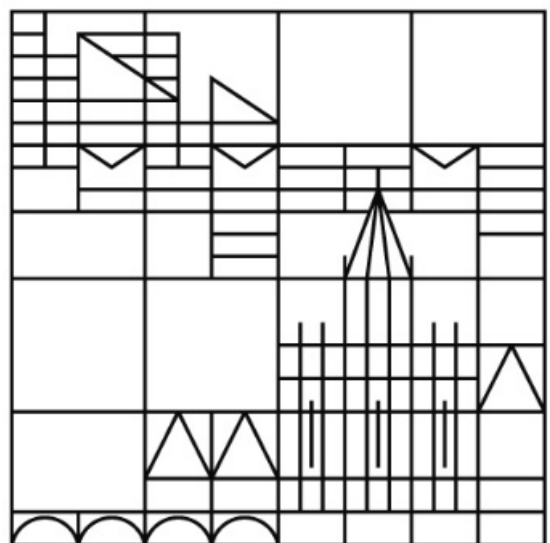
Parties contribute to the making of the will of the people, as the German constitution further demands. This contribution is often conceptualized as picking up the citizens' individual wills, hundreds of thousands of tiny little will-atoms, so to speak, and arranging them for the election into something big and general which then can be handed over to the state as the will of the people to implement. This seems to lend further plausibility to the analogy: If that is what parties do, then their internal decision-making should be part of the same process.

But *is* that what parties do? Isn't it rather that they offer citizens choices by which they form their individual will in the first place? These distinct little individual micro-wills ready to be collected for building the macro-will of the people – do they even exist unless there are parties offering proposals to chose from first? Most of us like social justice and low taxes at the same time. We usually balance both by choosing between concrete proposals we can make up our minds about. *This* is what parties do.

And once we have chosen, we also can hold them responsible for the validity and success of their proposals. The elected has the right to decide in voter's name, and the voter has the right to hold the elected responsible for it. If the proposal turns out to have been crap, I can vote the culprit out and reverse the decision.

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# Universität Konstanz



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This is why the Brexit referendum was such a tremendous betrayal at the part of the Tories: Instead of making a concrete proposal and taking responsibility for it, they turned to the voters and asked *them* what they generally had in mind about the UK's place in the EU. The result: a decision no-one knows the concrete meaning of nor how to implement it nor how to reverse it if it turns out to be crap. A decision no-one is responsible for.

If one looks at some European parties, it appears that primary elections of party leaders have a bit of that quality, too, sometimes. Ordinary party members, who pay their membership fees and give their time and money but otherwise have no function and carry no responsibility, are asked to decide by tired and gutless functionaries who prefer to hide behind the "will of the people" instead of taking the responsibility that comes with their office. I don't think there is necessarily anything particularly democratic about this practice. In fact, it appears that it is at times actually quite damaging to democracy. If everyone is responsible, nobody is responsible. Identity takes the place of responsibility. What is important is no longer what the party is good for, but what is good for the party. What warms the soul of the members. Thus, the party turns from an efficient apparatus for answering questions of power into a gooey, whining, self-centred heap of sourpusses and schemers which no-one likes and no-one needs, in a word: the SPD.

Isn't that ironic? It wasn't too long ago that a rather different party would have fit that description quite nicely. Perhaps it was the privilege of the Greens to have experimented with the pros and cons of *Basisdemokratie* at a more innocent age. Now they have put that behind themselves. And stand prepared to take the place the SPD has left.

## Polyphony

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On Verfassungsblog, the big issue of this week was still the epochal double decision of the Federal Constitutional Court about the Right to be Forgotten: THOMAS KLEINLEIN thoroughly and extensively analyses the "new strong voice in European fundamental rights polyphony" which the Karlsruhe court intones. MORITZ SCHRAMM examines the concept of "diversity of fundamental rights" as the pivotal point of the FCC's argumentation. And MARTEN BREUER takes the liberty of pointing out that the FCC had put forth "thinly concealed judge-made law for its own cause".

The European polyphony of fundamental rights can also be experienced in the question of human dignity and the right to a minimum subsistence level: Not only the FCC, but also the ECJ recently gave an answer to this question, as IBRAHIM KANALAN reports.

The third voice in the choir is sung by the Strasbourg Human Rights Court, and for a long time it has sounded suspiciously thin when it came to authoritarian **Turkey**. There, a commission is in charge of adjudicating on cases about the cleansing of the public service under emergency rule, which is why the road to legal recourse in Strasbourg is blocked for most victims, so far. [ALICE DONALD](#) calls on the European Court of Human Rights finally to recognize the ineffectiveness of this commission and to open up legal recourse.

**Malta** is currently plunging into a government crisis of breathtaking proportions since it became known what many had already suspected, namely that the murder of the journalist Daphne Caruana Galizia involves the government of Prime Minister Joseph Muscat. [JUSTIN BORG-BARTHET](#) vigorously calls on the EU Commission to take action in this blatant case of rule of law failure.

In **Chile**, after weeks of severe crisis, a new constitution is supposed to help the country shake off the Pinochet trauma. [SERGIO VERDUGO](#) shows that this will not be without complications.

After the great public response to our call for solidarity for the great constitutionalism scholar Wojciech Sadurski who is currently being tried in **Poland** for "insulting" the ruling party PiS, [JOHN MORIJN](#) considers which general conclusions legal activists should draw in the fight against authoritarian populism in order to increase their chances of success.

In Poland hardly a day goes by without further reprisals against recalcitrant judges. Meanwhile in **Germany**, former Federal Interior Minister Thomas de Maizière has suggested ways to increase the efficiency in the judiciary – much to the concern of [OLAF KOWALSKI](#).

In **Hungary**, the Fidesz-dominated parliament has long hampered independent journalists' reporting. One of them, [BEATA BAKÓ](#), describes how this affects her daily work and what new ideas Parliament President László Kövér recently came up with.

**Germany** has recently reduced VAT on menstrual products, and anyone who considers this topic remote or even gross should definitely read [ILAYDA ESKITASCIOGLU's](#) article on "Tampon Tax".

## Elsewhere

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[ADRIANO MARTUFI](#) and [CHRISTINA PERISTERIDOU](#) are disappointed by the recent ECJ case law on pre-trial detention in **Bulgaria**.

[EDOARDO STOPPIONI](#) spoke to CONSTANCE GREWE about her life, about European constitutional law and about her time as a constitutional judge in **Bosnia-Herzegovina**.

[PIERRE DE VOS](#) explains why the Supreme Court of Appeal declared the law against hate speech in **South Africa** unconstitutional.

ELINA LEMAIRE discusses why it is so arduous to change the **Greek** constitution.

LETICIA MARÍA RUIZ RUIZ RODRÍGUEZ doubts whether the January elections in **Peru** will help the country out of its political crisis.

CHARLOTTE GILMARTIN reports on a decision of the British Supreme Court on the illegality of deportation detention in the **UK**.

MICHAEL C. DORF shares its views on the hearing of four legal experts in the impeachment case against **US** President Trump.

REKHA OLESCHAK-PILLAI analyses the first case of citizenship revocation against an Islamist terrorist suspect in **Switzerland**.

So much for this week. Before I end, a word in our own cause, if you allow: you may have noticed how much the number of posts we publish every week has risen in recent months. This has caused us great pleasure, of course, but frankly also a bit of a strain. We can hardly keep up at times. Which means: we urgently have to expand our editorial capacity.

That costs money, as you can imagine. You, our beloved readers for whom we do this every day, can support us in that respect, and many already do – but many do not. If you are one of those who have always thought that these Verfassungsblog guys actually deserve some help, but haven't come around for a thousand good reasons – now is your chance!

Many thanks and all the best,

Max Steinbeis



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All the best, *Max Steinbeis*

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